

No. 06-4660

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Jul 08, 2008

LEONARD GREEN, Clerk

RICHARD WADE COOEY II, et al.,

Plaintiff,

KENNETH BIROS,

Plaintiff-Appellee,

v.

TED STRICKLAND, Governor; REGINALD A.
WILKINSON, Director; JAMES S. HAVILAND,
Warden,

Defendants-Appellants.

ORDER

Before: SUHRHEINRICH, SILER, and GILMAN, Circuit Judges.

Defendants appeal an order of the district court in this civil rights action granting plaintiff Biros's motion for a preliminary injunction staying his execution pending further order of that court. The defendants have now filed a renewed motion to vacate the preliminary injunction in light of the recent decision of the United States Supreme Court in *Baze v. Rees*, – U.S. –, 128 S. Ct. 1520 (2008). Plaintiff Biros opposes the motion.

Upon consideration, we conclude the question of whether the preliminary injunction should remain in effect following the *Baze* decision is an issue that should be addressed initially by the district court.

It therefore is **ORDERED** that this appeal is remanded to the district court in order to permit that court to address the issue of whether the preliminary injunction issued on December 21, 2006,

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should be vacated in light of the *Baze* decision. Such remand is final for purposes of jurisdiction in this court, and the district court may schedule whatever briefing and hearing schedules it deems necessary for its consideration of this matter. Following a ruling by the district court, any aggrieved party must file a new notice of appeal in order to secure further appellate review in this court.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Leonard Green", written in a cursive style.

Leonard Green
Clerk